THE Law Vol. 57

Neceſſity of limiting the Power of the PRACTITIONERS

In the ſeveral Courts of Juſtice;

AND OF

Making effectual the LAW for TAXING the BILLS of ATTORNIES and SOLICITORS:

In a LETTER to

ALEXANDER WEDDERBURNE, Eſq.

HIS MAJESTY'S SOLICITOR-GENERAL.

LONDON:

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An APPEAL TO THE PUBLIC, relative to a CAUSE lately determined in the COURT OF CHANCERY; Price 1s. 6d.

ALSO,

A LETTER TO THE SOLICITOR-GENERAL, relative thereto; Price 6d.

TO THE

SOLICITOR-GENERAL.

SIR,

ALTHOUGH much might perhaps be ſaid in Praiſe of the Moderation and Juſtice of Individuals, who are, or who have been inveſted with extenſive and undefined Power, yet it is I believe univerſally agreed, that when a Power of this Kind, through the Inattention, or with the Connivance of legiſlative Authority, is uſurped by any numerous and conſiderable Society, it is of Courſe miſuſed, and directed to Purpoſes incompatible with Juſtice, and the general Good of the Community to which ſuch Society belongs. As this, therefore, is an Error which Men ſo connected and ſo circumſtanced neceſſarily fall into, the Deſpotiſm which they exerciſe cannot be imputed to them as a criminal Mode of acting: No; it muſt be imputed to the Legiſlature, that permits it to be exerciſed.—The Practitioners of the Law in this Country, who are a numerous, learned, and uſeful Body of Men, have aſſumed to themſelves much of this unauthoriſed Power; and, as many Inſtances of the Exerciſe of it have come within the Reach of my Obſervation, I ſhall ſet them down here as Circumſtances introductory to the Subject of the following Letter.

I have found by Experience—and, to uſe a common Expreſſion, Woeful Experience it is!—That as ſoon as a Man inſtitutes a Law-Suit, he becomes the Slave of thoſe whom he employs; and the only Reſource he has, when he groans under the Tyrants he has elected, is to exchange them for other Tyrants. If his Buſineſs is neglected even in the moſt ſhameful Manner, and great Expence and Inconvenience ariſe to him from ſuch Neglect, the Court in which he ſues cannot take up and determine the Matter between him and his Agents in a ſummary Way; he is left to his Remedy at Law: and a ſufficient Remedy it is. But how can he avail himſelf of it? No Lawyer of Eminence will act againſt another Lawyer of Eminence in a Caſe of that Kind. Nay, ſhould the Tyrants whom he has ſet over him ſhew undue Favour to his Opponent, and ſhould the Damage which he ſuffers from ſuch infamous Partiality be of Moment to his Circumſtances, eminent Lawyers will not act againſt eminent Lawyers, and he, the Suitor, will find no Redreſs.—Again—

A falſe, ſcandalous, and malicious Libel, intitled, The Anſwer of the Defendant, *&c. &c.* is ſigned by Counſel, and no Remedy can be had againſt the Miſcreant who ſigns it: He is protected by the Profeſſion.—A Solicitor gives evaſive and falſe Teſtimony. Can the Culprit be brought to Juſtice? No; he too is protected by the Profeſſion *.—— Further——

The extraordinary Difficulty of putting in Force the Law for taxing the Bills of Attornies and Solicitors, a Difficulty ariſing from the ſame

* Vide Appeal to the Public, relative to a Cauſe lately determined in the Court of Chancery.

illegal Aſſociation, is a crying Evil; an Evil by which Thouſands are undone.———As an Inſtance of this Difficulty, I ſhall mention the following Caſe. A Solicitor delivered to me an improper and unreaſonable Bill, which, by unwearied Perſeverance, and by Means not neceſſary to be ſet down here, I cauſed to be taxed, and more than One Sixth Part of it was taken off by the Maſter.—The firſt Perſon that I applied to on this Occaſion, is a Solicitor of a certain Degree of Eminence in his Profeſſion; I ſhewed to him and left with him the Bill, and at the ſame Time told him, that my firſt Wiſh was to have the Matter properly ſettled in an amicable Way; but if that could not be done, I was determined to have the Bill taxed. Matters, however, were ſo managed by him, that an Action was brought againſt me, and he, inſtead of putting an immediate Stop to it, by obtaining an Order for taxing the Bill, ſuffered the Action to go on againſt me for a conſiderable Time. Finding myſelf in this diſagreeable Situation, and being well aware that what paſſes in Converſation is frequently forgot or miſunderſtood, I determined to ſend to him, and did accordingly ſend to him a Notice or Direction in Writing, to make immediate Application to the Court for an Order to tax the Bill; and this Notice, or Direction in Writing, was actually delivered into his own Hand, as appears by the Affidavit of Mr. Thomas Montague, now a Clerk in the Copper-Mine Office, in Cannon-Street. Notwithſtanding, however, the Delivery of this written Direction, nothing was done by him to ſtay theſe Proceedings at Law; the Action continued to go on againſt me; he continued to act on the defenſive; and I was at Length obliged to pay to the adverſe Party the Coſts of this unneceſſary Suit.

He

He then delivered to me his Bill, which is, as I am adviſed by Perſons well ſkilled in Buſineſs of that Kind, improper and unreaſonable; and I have therefore refuſed to pay it. Being nevertheleſs very deſirous of ſettling Accounts with him in a fair and equitable Manner, I have applyed to ſeveral eminent Solicitors, requeſting them either to procure for me a proper Adjuſtment of the Matters in Diſpute between us, or to cauſe the Bill to be judicially taxed. But theſe Applications have been fruitleſs.—One Solicitor tells me that he never taxed a Bill in his Life; another, That the Gentleman to whoſe Bill I object, is a Gentleman much reſpected in his Profeſſion: A Third exclaims againſt the exorbitant Bills of his Brethren, ſpeaks extremely well of *himſelf*, promiſes much, but does nothing. The Solicitor to whom I ſtand indebted, now preſſes for the immediate Payment of his Bill, and will in all Probability bring an Action againſt me ſhortly on that Account.—Theſe are the Difficulties which have attended me in reſpect to the Two Bills in queſtion; and theſe are the Difficulties which muſt neceſſarily attend other Men, who reſiſt this unauthorized Power, this Dominion that is founded on an illegal Aſſociation.

As I do not intend the Story which I have related as a Charge againſt any particular Man, but merely as a Narrative of the unjuſtifiable Proceedings of the Profeſſion, I do not think it requiſite to ſet down the Names of the Perſons who have acted in the Affair; but when I ſhall at any Time be called upon, in a proper Manner, to make good my Aſſertions, I will produce ſatisfactory Evidence, and will publiſh the Names of as many of the Parties concerned as ſhall be neceſſary.——Further——

The Caſe which I have laid before the Public, relative to a CAUSE LATELY DETERMINED IN THE COURT OF CHANCERY, is, in many Inſtances, a recent and ſtrong Example of the Tyranny above deſcribed. The particular Part of it which relates to You, Mr. Solicitor-General, ſtands thus: You omitted to bring forth my material Evidence; and I have thereby ſuffered a conſiderable Damage, to the Amount, as I verily believe, of 500*£*. and upwards, including Coſts—Coſts which, if my Caſe had been properly brought before the Court, I could not by any Rule of Equity have been decreed to pay. Yet ſuch is the Complaiſance of the Profeſſion to his Majeſty's Solicitor-General, that I think I can venture to ſay, no Lawyer (for I have tried many) will aſſiſt me in getting my Cauſe reheard, or in making Application of any Kind to the Lord-Chancellor, for Relief in the Matters complained of. Every Avenue to the Court is ſhut againſt me; the Prayer of the Suitor cannot be heard; and that great and truly Noble Lord, who delights in Acts of Benevolence, is deprived of his Right———The Power of giving Succour to the oppreſſed.

Upon the Whole, a Man of Eminence in Your Profeſſion, either Pleader, Attorney, or Solicitor, is in many Inſtances not amenable to Juſtice; he is raiſed above the Laws, and looks down with Deriſion on the Multitude whom he oppreſſes.

It therefore appears to me, that our Policy is in this Reſpect extremely defective: there is ſomething wanting; ſome ſalutary Inſtitution, ſome guardian Power, that may protect the helpleſs Client, and deliver him

from the Gripe of ſuch relentleſs Spoilers.—In other Countries, much inferior to England in Point of Conſtitution, theſe Miſchiefs have been perceived, and have been provided againſt; and it ſeems ſtrange, that in a Land flowing as this does with Patriotiſm and Political Enquiry, no Plan of this Kind has ever been adopted and carried into Execution. The Mode of framing ſuch a Law, and the Means of executing it, would not be found difficult. The Advantages which would ariſe from it are obvious.——But I do not intend, in this Letter, to attempt an Explanation of the Means by which this deſireable End may be accompliſhed; my preſent Deſign being nothing more than to point out the Neceſſity of doing ſomething that may effectually deſtroy this undefined, unconſtitutional and unnatural Power; and to ſhew that the Queſtion between You and Me is not a mere Matter of private Difference between Man and Man, but is a Queſtion that reſpects Society, and in which the Property and Independency of a Nation is immediately and materially concerned.

So far as it relates to us only, it is of little Moment: Whether You and I treat each other in a proper or improper Manner, is of no Conſequence to Mankind: And indeed, Perſons unacquainted with the Principles of free Government, may probably conceive, that the Difference which ſubſiſts between us is a Buſineſs in which the Public has no Intereſt; and may look upon the Treatment which I have received from You, to be a Matter for Laughter.——A diſſipated Man, cry they, has truſted his Money in the Hands of a profligate Woman, and ſhe has tricked him of it. Well, where is the Wonder! What better could

he

he expect? The Loſs of it is a proper Puniſhment for his Indiſcretion; and a good Leſſon of Inſtruction to other diſſipated Men, to avoid the like Inconveniency. Perhaps ſo: It may, however, on the other Hand be inſiſted, that when an Affair of this Kind indiſpenſibly requires the Interpoſition of a Court of Juſtice, and when the Contention between the Parties then is *ſub judice*, ſuch Inſtruction ſhould be given, and ſuch Puniſhment ſhould be inflicted in due Form of Law, by Perſons properly authoriſed to inſtruct and to puniſh. Had this been the Caſe, I ſhould have acknowledged the Juſtice of the Sentence, and ſhould have revered the Tongue that gave it Utterance. But ſuch it ſeems has been my Indiſcretion, ſuch my Miſdemeanors, that I have forfeited my Right to a public Trial; the Chance of eſcaping Puniſhment is taken away from me, and I am condemned even before I go into the Court. Is it not ſo, Mr. Solicitor-General? Can my Cauſe be ſaid to have been heard by the Chancellor, when my material Evidence was not ſubmitted to him? Certainly it cannot. The Decree, therefore, by which I ſuffer, may, without taking any very extraordinary Liberties with Language, be properly ſtiled Your Decree; and I now find that my Bill, which was addreſſed in common Form, and began with theſe Words:— "Humbly complaining, ſheweth unto Your Lordſhip"—might as well have been addreſſed to You, and began in the following Words:— "Humbly complaining, ſheweth unto Your Honour, his Majeſty's "Solicitor-General."——

Although this Mode of adminiſtering Juſtice, has not yet indeed had the Sanction of Parliament, I am well aware that it is often practiſed; and

and do admit, that if all Cauſes were determined in like Manner, by You and other eminent Pleaders at the Bar, ſome Advantages would ariſe from it; and ſeveral Inconveniences which the Suitors of the ſeveral Courts now lie under, would be effectually remedied. For inſtance: When a Chancellor is ſuppoſed to have made an improper Decree, or the Judges of a Court of Common Law to have given an improper Verdict, there are always Lawyers enough ready to peck at them, and to pluck their Feathers; a Buſtle immediately enſues; an Appeal is determined upon; the Cauſe comes on to be heard by the Houſe of Lords; and perhaps, after all, the Decree, or Verdict, which ever it is, is affirmed: the Parties having been put to great and unneceſſary Expences. Whereas, by this improved Mode of adminiſtering Juſtice, the Caſe will be entirely altered: No Pleader of Eminence will aſſiſt in appealing from the Decree of another Pleader of Eminence; ſuch Decrees will therefore be final; great Expences will be ſaved to the Parties, and the Houſe of Lords will be eaſed of the Fatigue of Judicature.

Admitting, however, theſe Advantages, I am ſtill induced to think that there are many old-faſhioned Folks, and I confeſs myſelf to be one of the Number, who prefer the known and eſtabliſhed Rules of Law, and the known and eſtabliſhed Rules of Equity; and think that Property, ſubjected to the Will and Caprice of any particular Man, or Set of Men, is held by a precarious and baſe Tenure.

My Letter to You, which I publiſhed on the 6th of May laſt, did not it ſeems deſerve Your Notice: You ſee nevertheleſs that I ſubmit to

addreſs You a ſecond Time; and ſuch is my Humility, that if this Letter ſhould not call forth your Attention, I ſhall in all Probability write to You a Third. The malicious and groundleſs Reflections which, by Anonymous Writers, are ſo abundantly ſcattered abroad, and indiſcriminately caſt on every Man who ventures forth into the public Walks of Life, are for the moſt Part innocent in their Effects; they are little more than the Daily Profit of the News-Writer, and the Daily Amuſement of the Idler; they hurt no Man, and no Man anſwers or regards them: But when a Charge is made and ſigned by the Party aggrieved; when the Injury alledged is the Non-performance of Buſineſs, for the expected Execution of which a Sum of Money has been paid; and when the Facts in ſuch Charge contained, are Matters of recorded Truth, I cannot I confeſs imagine, by what Rule of Decorum, or by what Rule of Right, a Man ſo charged, can refuſe to vindicate himſelf.

You received from me, at the Hearing of the Cauſe in queſtion, a Fee ſuitable to Your Rank in Your Profeſſion; and I flattered myſelf that I had thereby purchaſed the Aſſiſtance of a capable, faithful, and diligent Advocate: But ſuch Aſſiſtance I have not had from You; and why I have not had it, ſhall be now the Subject of my Enquiry.

In Regard to Your Abilities, they ſtand well in the Eſtimation of Mankind, and I muſt not queſtion them; neither may I queſtion Your Integrity: Your Reputation as an honeſt Man may, for any Thing that I know to the contrary, be equal to Your Reputation as a Lawyer, or as a Senator. Beſides, in a Caſe circumſtanced as this is, what Man living

can ſuppoſe You capable of an Intention to do wrong? Could You, who are already advanced to the Office of Solicitor-General; who hope ſhortly to be further promoted; and who give Promiſe of ſucceeding even to the firſt Department in Your Profeſſion? could You, I ſay, ſuppreſs the Evidence of Your Client, with a View to his Prejudice? could You lend Your Hand to looſe the Bands of Civil Government, and to aboliſh the appointed Modes of procuring Juſtice?——Impoſſible!—Fees received; Confidence repoſed; the ſacred Right of a Britiſh Subject to have a fair Hearing of his Cauſe: Theſe, all theſe Conſiderations combine to clear You, and to wipe away ſuch Diſgrace, ſuch Diſhonour from Your Name.

The Miſchief, therefore, that has happened, muſt neceſſarily have ariſen from Your Neglect: And there, the inſufficient and circumſcribed Powers of the human Mind; an Inability to attend, at the ſame Inſtant, to Matters diſtinct and diſtant from each other, may plead on Your Behalf. Some important Affair in the Buſineſs of Your Profeſſion might engroſs Your Thoughts; a Parliamentary Oppoſition to the King's Meaſures might call You forth; the Miniſter might require Your Voice: Numberleſs Avocations might divert Your Attention; and my Intereſt might fall a Sacrifice to Matters of far greater Moment.

Admitting this to be the Caſe, Your Neglect is not unpardonable; nor is the Injury that I have received irreparable: A Re-hearing would ſet the Matter right. How happened it then, that when You was informed of my Wiſhes to avail myſelf of that Proceeding, You did not think

think it expedient to intereſt Yourſelf in the Affair? How happened it that You did not eagerly embrace an Opportunity of doing Juſtice to Your Client, and of giving Remedy to an Evil which had ariſen from Your own Default?——

The Queſtion, Mr. Solicitor-General, merits Notice; and I flatter myſelf with the Hope that You will anſwer it. Your whole Profeſſion admit that I have not had Juſtice; and their Talk is, that it is a Caſe in which I never ſhall have Juſtice.—Shameful Talk indeed! It ſhocks the Ear of Liberty.—You, Sir, can ſilence it: You, Sir, can ſet me free from the Outlawry which has ſo irregularly iſſued againſt me; and can reſtore to me my Birth-Right, the Privileges of a Britiſh Subject. Step forth then from amidſt the numerous and deſpotic Society of which You are a Member, and diſtinguiſh Yourſelf as an Individual whoſe Moderation merits Praiſe, and who is worthy of being intruſted with extenſive and undefined Power.

I am,

SIR,

Your moſt obedient Servant,

Poland - Street,
October 21, 1774.

P. MAWHOOD.

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I am,

SIR,

Your moſt obedient Servant,

Poland-Street,
October 21, 1774.

P. MAWHOOD.

POSTSCRIPT.

I SHALL, in my next Letter, ſubmit to the Conſideration of the Public, my Thoughts on the ſeveral Regulations neceſſary to the Appointment of an Advocate-General, and proper Officers under him, for the Purpoſe of putting a Stop to the Tyranny above deſcribed.

POSTSCRIPT.

ISHALL, in my next Letter, submit to the Consideration of the Public, my Thoughts on the several Regulations necessary to the Appointment of an Advocate-General, and proper Officers under him, for the Purpose of putting a Stop to the Tyranny above described.